

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-118

ROBERT TANNER

APPELLANT

V.

CARROLL COUNTY, ARKANSAS

APPELLEE

Opinion Delivered November 5, 2008

APPEAL FROM THE CARROLL
COUNTY CIRCUIT COURT
[NO. CIV-07-114]

HONORABLE ALAN D. EPLEY
JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Appellant, Robert Tanner, appeals from the circuit court’s dismissal of his appeal from the county court to the circuit court. The circuit court found that appellant failed to perfect the appeal by filing with the circuit court a record of the county-court proceedings, as required by Rule 9(b) of the District Court Rules. Appellant asserts that the record was given to the circuit-court clerk, but the clerk failed to file stamp the record. We affirm, but we do so based on appellant’s failure to appeal within thirty days from the entry of the county court’s order, as required by Rule 9(a) of the District Court Rules.¹

On April 10, 2007, the county judge entered County Court Order 2007-004, which ordered that “the gate at the junction of Carroll County Road 806 and Arkansas State Highway 311, acknowledged ownership by [appellant], be removed within twenty (20) days

¹District Court Rule 1(a) provides that these rules govern procedure in county courts.

of service of this County Court Order, and access to Carroll County Road 806 remain open.” Twenty days later, on April 30, 2007, appellant filed a “Petition To Set Aside Order And For Hearing.” In his petition, he noted that on April 10, 2007, the county judge “issued an Order to re-open” the road. He alleged that the road had previously been closed in 1990 by petition, but that the 1990 county-court order contained an error in that it closed only a portion of the road. He asserted that the “error should be corrected by the County Judge and the Order to re-open should be set aside.” He further alleged that the county judge “denied the property owners of said closed road their constitutional rights of due process,” and he asked for a hearing. Appellant prayed that the county court “set aside the Order re-opening County Road 806.”

Twenty-four days following the earlier petition, on May 24, 2007, appellant filed an “Amended Petition To Set Aside Or Amend Order And For Hearing.” In this petition, he asserted that the 1990 order was “ambiguous” in that “the petition requested the road to be closed for the entire length and the order agrees to do that but also states that a specific portion is to be closed.” He stated that the “ambiguity should be corrected to conform with the petition and the entire length of the road should be closed,” citing Rule 60 of the Arkansas Rules of Civil Procedure. He prayed that the county court “set aside the Order closing a portion of County Road 806 rather than the entire section of road as requested in the petition.”

A hearing was held, and on June 4, 2007, the county court entered an order stating that the “PETITION to set aside COUNTY COURT ORDER 2007-004 and for such

other relief claimed therein is hereby DENIED.” It further ordered appellant “to remove any obstruction or gate or any other structure blocking or impeding access to County Road 806.”

Appellant sought to appeal, but on August 27, 2007, the circuit court entered an order dismissing the appeal for lack of jurisdiction. The court noted that a “record of the proceedings certified by the County Clerk is in the file, but does not bear a file-mark from the Circuit Clerk.” The court noted that Rule 9(b) of the District Court Rules required appellant to perfect the appeal by a filing a record of the proceedings had in the county court, and because “[t]here are no Circuit Court Clerk file-marks on the ‘County Court record of proceeding,’” the appeal was not perfected within thirty days of the county court’s entry of judgment on June 4, 2007.²

Appellant filed a petition to set aside the circuit court’s dismissal, asserting that the circuit-court clerk’s failure to mark the county-court record was a “clerical oversight.” Appellant attached to the petition an affidavit signed by the circuit-court clerk. In it, the clerk averred that “the Docket sheet indicates that the County Court’s record was received on July 5, 2007,” but that “the standard procedure of ‘file marking’ the documents received from the County Clerk did not occur and that the records were placed in the file out of the usual

²Rule 9(b) provides as follows:

An appeal from a district court to the circuit court shall be taken by filing a record of the proceedings had in the district court. Neither a notice of appeal nor an order granting an appeal shall be required. It shall be the duty of the clerk to prepare and certify such record when requested by the appellant and upon payment of any fees authorized by law therefor. The appellant shall have the responsibility of filing such record in the office of the circuit clerk.

order.” The clerk further averred that “the failure to file mark the record and file the documents in the proper order constitutes a clerical error arising from an oversight or omission by the office of the Clerk.” The circuit court, however, denied appellant’s petition.

Appellant appeals from the circuit court’s dismissal, but we affirm, though not for the reasons stated by the circuit court, but because appellant failed to timely appeal from the April 10, 2007, order. Rule 9(a) of the District Court Rules provides that “[a]ll appeals in civil cases from district courts to circuit court must be filed in the office of the clerk of the particular circuit court having jurisdiction of the appeal within 30 days from the date of the entry of judgment.” The rule further provides, however, that “[t]he 30-day period is not extended by a motion for judgment notwithstanding the verdict, a motion for new trial, a motion to amend the court’s findings of fact or to make additional findings, or any other motion to vacate, alter or amend the judgment.”

The county court entered an order on April 10, 2007. According to Rule 9(a), appellant had thirty days to appeal from that order, but he failed to do so and instead, he filed on April 30, 2007, a petition to set aside the April 10, 2007, order, and filed an amended petition on May 24, 2007. Reading the petitions together—including the allegation that there was an ambiguity in the 1990 order needing correction pursuant to Rule 60—it is apparent that appellant’s purpose in filing the petitions was to ask the county court to vacate the April 10, 2007, order. Rule 9(a), however, provides that the petitions to vacate a judgment do not extend his time for appeal from the judgment. Therefore, his appeal was from the circuit court’s April 10, 2007, order and he failed to timely appeal from that order. *See Barnett v.*

Howard, 353 Ark. 756, 120 S.W.3d 564 (2003) (holding that appeal from county court was untimely because a motion for new trial did not extend the time for appeal). Accordingly, we affirm the circuit court's dismissal of his appeal to the circuit court.

Affirmed.

GRIFFEN, J., agrees.

PITTMAN, C.J., concurs.